



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Otterbein et al. Art Unit : 1618
Serial No. : 10/600,182 Examiner : Dameron Levest Jones
Filed : June 20, 2003 Conf. No. : 8996
Title : PHARMACEUTICAL USE OF NITRIC OXIDE, HEME OXYGENASE-1 AND
PRODUCTS OF HEME DEGRADATION

Mail Stop Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO ACTION OF APRIL 19, 2006

In reply to the Office action of April 19, 2006, Applicants submit the following remarks.

Claims 1 to 23 are pending in this application. Claims 1 to 15, 21, and 23 were withdrawn from consideration by the Examiner following Applicants' election of Group 33 with traverse. Applicants maintain their traversal of the restriction requirement for the reasons set forth in the response filed January 24, 2006, and respectfully request that the Examiner reconsider the issue in light of those reasons. Until the restriction requirement issue has been resolved by the Office, Applicants prefer to keep the non-elected claims pending in the case.

Applicants note that the Office action acknowledges at page 5 the novelty and non-obviousness of the elected claims over the art. The sole ground for rejecting the claims that is set forth in the Office action is obviousness-type double patenting, as discussed below.

Claims 16 to 20 were provisionally rejected for alleged nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, and 8 to 13 of copending Application No. 10/177,930 (the '930 application). The Office action states at page 4 that the present claims are not patentably distinct "because both sets of claims are directed to a method of transplanting an organ by administering a composition comprising carbon monoxide." The Office action acknowledges that the present claims differ from those of the '930 application in that the present claims require administration of both nitric oxide and carbon monoxide. At page 5, the Office

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